EXHIBIT C

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SAP admits some Oracle downloads in hacking lawsuit

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SAP has admitted that its TomorrowNow subsidiary made some 'inappropriate' downloads from an Oracle website, but said the information did not cross the firewall into SAP's own systems.

The news came as SAP filed its much-anticipated response to March's Oracle lawsuit, which alleges corporate theft of support materials and copyrighted code by TomorrowNow. But rather than the aggressive defense that was expected, the tone was subdued.

The gist of SAP's defense is that TomorrowNow was authorised to download materials from Oracle's website on behalf of its customers.

However, "some inappropriate downloads of fixes and support documents occurred at TomorrowNow," the company said in a statement.

"I can say that TomorrowNow has clear procedures but it is apparent they were not followed properly in all cases," said SAP CEO Henning Kagermann.

In the filing, SAP acknowledged that TomorrowNow did download some information that it was not entitled to. It also responded to Oracle's claims of copyright theft, including the allegation that TomorrowNow copied Oracle's PeopleSoft Daylight Saving code.

"Defendants admit that certain portions of TN's PeopleSoft Daylight Savings Time solution are substantially similar and in some instances identical to Oracle's DST Solution, but otherwise deny the allegations," it said.

SAP said TomorrowNow, like other third-party support providers, has the right to download support materials for and on behalf of its customers and that TomorrowNow depends on its customers granting it permission to access support materials using the customer's password. It also said that this is permitted according to Oracle's own 'Customer Connection' website. However, in some instances, TomorrowNow downloaded material that was not covered by its customers' licences and that constituted the inappropriate downloads.

There was a tangible sense of disappointment at SAP as a company, and on the part of Kagermann in particular. "When I learned of the Oracle complaint I was personally surprised and disappointed that Oracle had not chosen to talk directly to me," he said during a conference call to discuss the lawsuit response. "Even a single inappropriate download is unacceptable from my perspective. We regret very much that this occurred. I want to reassure our investors, customers, partners, and employees that SAP takes any departure from the high standards we set for all of our businesses very seriously, regardless of where it occurred or how confined it may be."

He has taken action to ensure compliance and best business practice, something SAP prides itself on, at TomorrowNow, starting with the appointment of SAP America chief operating officer Mark White as TomorrowNow's executive chairman. White will manage operations, including compliance programs at the subsidiary with TomorrowNow CEO Andrew Nelson reporting to him. Action will be taken to enforce existing procedures and new policies, and TomorrowNow staff will undergo fresh training.

SAP stressed that information downloaded by TomorrowNow remained within the TomorrowNow firewall and that SAP did not have access to it or any proprietary Oracle information. By highlighting that the material was not on its systems and that neither SAP nor SAP America had access to Oracle intellectual property, SAP is addressing what it said in its filing is an implication by Oracle that SAP, SAP America, and TomorrowNow failed to observe the corporate separateness of each entity.

Commenting on this aspect of the response, fellow third-party maintenance provider Rimini Street said clear separation is a prudent move given the highly competitive and aggressive business situation. "SAP, as they noted, created a purposeful, strong firewall between TomorrowNow and SAP's other entities from day one. As noted, no materials or individuals are allowed to cross between the entities. SAP noted that the reason was that, as a competing software developer, they wanted to make sure that nobody could credibly claim any contamination of SAP's own software product intellectual property by any materials or knowledge of TomorrowNow.

This was a prudent legal decision given the aggressively competitive position of Oracle and SAP," said Rimini Street.

SAP's next task is to provide the DoJ with additional information as it has requested that both SAP and TomorrowNow provide 'certain documents'. While stating that both entities intend to fully cooperate with the request, Kagermann would not elaborate on what the documents concern.

The next formal stage in the legal process is the first case-management conference before Judge Martin Jenkins, which is scheduled for 4 September. Asked whether SAP might consider an out-of-court settlement, Kagermann replied that because a number of the key allegations made by Oracle appeared to be unfounded, he did not want to speculate on SAP's legal options.

Oracle is reported to be happy, maintaining that it has succeeded in forcing SAP to disclose its activities. "SAP CEO Henning Kagermann has now admitted to the repeated and illegal downloading of Oracle's intellectual property," said Oracle lawyer Geoff Howard in a statement quoted by Reuters. "Oracle filed suit to discover the magnitude of the illegal downloads and fully understand how SAP used Oracle's intellectual property in its business."

The ongoing nature of the lawsuit means it is too early to draw conclusions about long-term implications for the third-party maintenance market. Rimini Street does not think it will change the way third-party providers access the original vendors' support sites on behalf of their customers. "The SAP/TomorrowNow issues were procedural errors that were apparently, according to SAP, the result of employee and TomorrowNow management mistakes," said Rimini Street in a written statement to ComputerWire. "There is no change to the concept or proper process of onboarding a new client electing third-party support options." However, customers are becoming more conscious of compliance issues. "Customers are asking a few more questions about how onboarding is completed from a process point of view, and asking that the procedures be described in more detail in the contract. However, this has actually helped the clarity and communication of process with the client, and has been a positive evolution of the contracting process," said the company.

Conclusion

Despite the partial admission of guilt and Kagermann's disappointment, SAP is not about to roll over and give in. Its filing is dismissive of many of Oracle's allegations, calling them unfounded or containing too little information to enable SAP to respond. It castigates Oracle for trying to undermine the third-party maintenance market, stating its opinion that "this case is really about competition and a customer's right to choose its software services providers."

SAP accuses Oracle of making inflammatory statements but is not above playing the rhetoric game itself. "Oracle professes surprise and confusion about how TN can provide services more cost-effectively than Oracle. The answer is simple - TN does not force its service customers to pay artificially inflated prices for service to fund Oracle's future acquisition and integration of products that customers do not want or need," it states in its response filing.

This will be a hard-fought case because it is hard to see the two coming to an out-of-court settlement. The matter may hinge on the scale of the downloads and to what extent they were used.

SAP looks like it is working to contain the issue within the TomorrowNow subsidiary, stressing that they were used only by TomorrowNow and that SAP and SAP America never saw or benefited from them.

Source: Computergram

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